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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[redacted]

File: [redacted] Office: Texas Service Center Date: JUL 31 2003

IN RE: Petitioner. [redacted]

Petition: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5).

The director determined that the petitioner had failed to demonstrate a qualifying investment of lawfully obtained capital in a targeted employment area.

On appeal, counsel, without explanation, requests oral argument. Oral argument is limited to cases in which cause is shown. A petitioner or his counsel must show that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Therefore, the petitioner's request for oral argument is denied.

Section 203(b)(5)(A) of the Act, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002), provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

> (i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and
>
> (ii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

MINIMUM INVESTMENT AMOUNT

The petitioner indicates that the petition is based on an investment in a business located in a targeted employment area for which the required amount of capital invested has been adjusted downward to $500,000.

8 C.F.R. § 204.6(e) states, in pertinent part, that:

> *Targeted employment area* means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.

8 C.F.R. § 204.6(j)(6) states that:

If applicable, to show that the new commercial enterprise has created or will create employment in a targeted employment area, the petition must be accompanied by:

(i) In the case of a rural area, evidence that the new commercial enterprise is principally doing business within a civil jurisdiction not located within any standard metropolitan statistical area as designated by the Office of Management and Budget, or within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States; or

(ii) In the case of a high unemployment area:

(A) Evidence that the metropolitan statistical area, the specific county within a metropolitan statistical area, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business has experienced an average unemployment rate of 150 percent of the national average rate; or

(B) A letter from an authorized body of the government of the state in which the new commercial enterprise is located which certifies that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area. The letter must meet the requirements of 8 C.F.R. § 204.6(i).

8 C.F.R. § 204.6(i) provides:

The state government of any state of the United States may designate a particular geographic or political subdivision located within a metropolitan statistical area or within a city or town having a population of 20,000 or more within such state as an area of high unemployment (at least 150 percent of the national average rate). Evidence of such designation, including a description of the boundaries of the geographic or political subdivision and the method or methods by which the unemployment statistics were obtained, may be provided to a prospective entrepreneur for submission with form I-526. Before any such designation is made, *an official of the state must notify the Associate Commissioner for Examinations of the agency, board or other appropriate governmental body of the state which shall be delegated the authority to certify that the geographic or political subdivision is a high unemployment area.*

(Emphasis added.) A petitioner must demonstrate that the location of the business was in a targeted employment area at the time of filing. *Matter of Soffici*, 22 I&N Dec. 158, 159-160

(Comm. 1998), *cited with approval in Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1041 (E.D. Calif. 2001).

The petition is based on an investment in [redacted] located at [redacted] The petitioner submitted a letter from [redacted] a senior economist with the New York State Division of Research and Statistics, Bureau of Research and Evaluation, to [redacted] of Empire State Development asserting that census tracts 43 and 55.02 are targeted employment areas, having unemployment rates of 6.4 percent for 2000. On November 16, 2001, the director issued a request for additional documentation. This request, however, did not question the petitioner's claim to have invested in a targeted employment area. Thus, the petitioner's response did not address this issue. In his final decision, the director concluded that the petitioner had not submitted any evidence to establish that she had invested in a targeted employment area. On appeal, counsel resubmits the letter from Ms [redacted]

The resubmitted letter reveals that the Division of Research and Statistics is under the Department of Labor. The New York State Department of Labor's website, www.labor.state.ny.us/working_ny/finding_a_career/immigrat.htm, indicates that the Governor of New York designated the Empire State Development Corporation as the contact agency for requests regarding targeted employment areas. The contact person is Mr [redacted] Akasaka of the New York State Department of Economic Development. This information is consistent with the information provided to the Service (now the Bureau) from the State of New York delegating to the Department of Economic Development the authority to designate targeted employment areas. Ms [redacted] does not work for the Department of Economic Development. While her letter is addressed to Mr [redacted] of Empire State Development, the record contains no information that the agency with the authority to designate targeted employment areas concurred with and adopted her assessment. As such, her letter does not meet the requirements of 8 C.F.R. § 204.6(i) quoted above. Thus, the minimum investment amount in this matter is $1,000,000.

INVESTMENT OF CAPITAL

8 C.F.R. § 204.6(e) states, in pertinent part, that:

> *Capital* means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness.
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> * * *
>
> *Invest* means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

8 C.F.R. § 204.6(j) states, in pertinent part, that:

> (2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:
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> > (i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;
> >
> > (ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices, sales receipts, and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;
> >
> > (iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;
> >
> > (iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or
> >
> > (v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

On the petition, the petitioner claimed a total investment of $759,025, with an initial investment of $26,000 on August 31, 2000. The petitioner submitted [redacted] tax return for 2000. Schedule L of this return reflects $20,000 of common stock, no additional paid in capital, and $589,026 in loans from shareholders. The petitioner also submitted numerous invoices.

In his request for additional evidence, the director requested evidence that the petitioner received funds from overseas as claimed, and that she transferred them to [redacted] In response, the petitioner submitted [redacted] bank statements for October 2000 through January 2002, and more invoices. The petitioner also submitted [redacted] 2001 tax return. Schedule L of this return reflects $20,000 in stock, no additional paid-in-capital, and loans from shareholders increasing to $1,036,759 by the end of the year.

The director acknowledged that the petitioner personally had received $827,830 from an unidentified source, and stated:

> Also, the bank statements of the business enterprise account, show what appears to be regular business activity. There are a number of deposits in small amounts, but the Service cannot determine if any of these deposits were from the petitioner as part of her capital investment. The invoice copies only show that the company did purchase inventory from overseas venues.

On appeal, counsel notes that the director acknowledged that the petitioner received $827,830. Counsel dismisses the director's subsequent conclusion that the petitioner had not established that she invested those funds as "totally negative thinking." Noting the evidence of the company's expenses, counsel states, "this part of the denial, I submit, is both obtuse and yet ingenious, considering all the monies that were invested in excess of $500,000."

We do not find counsel's statements persuasive. A company can obtain funds from sources other than its sole shareholder, such as from a credit line or business proceeds. The fact that the petitioner personally received funds from overseas and that her company paid its expenses does not necessarily imply that the petitioner was the source of the company's capital. In the instant cas[redacted] bank statements reflect that most of the deposits are reimbursement from credit card companies and credit line infusions. Even if the petitioner was the source of the company's funds, that does not necessarily suggest that she contributed those funds as capital. In fact, [redacted] balance sheet indicates otherwise. As stated above, as of the end of 2001, the balance sheet reflects only $20,000 in capital. The remaining $1,036,759 shareholder contribution was a loan to the company. As quoted above, the definition of invest at 8 C.F.R. § 204.6(e) precludes loans to the new commercial enterprise.

SOURCE OF FUNDS

8 C.F.R. § 204.6(j) states, in pertinent part, that:

> (3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:
>
> (i) Foreign business registration records;

(ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

(iii) Evidence identifying any other source(s) of capital; or

(iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. *Matter of Ho*, 22 I&N Dec. 206, 210-211 (Comm. 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Comm. 1998). Without documentation of the path of the funds, the petitioner cannot meet her burden of establishing that the funds are her own funds. *Id.* Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). These "hypertechnical" requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Calif. 2001)(affirming a finding that a petitioner had failed to establish the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns).

Initially, the petitioner submitted a letter from [redacted] the petitioner's aunt. She asserts that she gifted funds to the petitioner for use as capital in the new commercial enterprise. In a separate letter, Mrs [redacted] asserts that she transferred $600,000 to the petitioner in September 2000, and that she would gift a total of $1,086,000. As evidence that Mrs [redacted] lawfully obtained her funds, the petitioner submitted bank reference letters, the tax returns for an Indonesian business, and Mrs [redacted] personal tax returns for 1996 through 2001. The tax returns are foreign-language documents. The petitioner did not submit certified translations of these documents. Rather, the petitioner attached an adhesive note indicating that the number on the front of the tax return reflected the amount of tax owed, and that the gross income could be calculated by "add[ing] 60%."

In his request for additional documentation, the director appears to have mistaken the tax returns for bank statements, noting that the petitioner had submitted foreign-language bank statements, and requesting the English translations of those statements. The director also requested evidence tracing the path of funds from the petitioner's aunt, to the petitioner, and finally to the new commercial enterprise.

In response, counsel asserts that the petitioner received the gifted funds through a bank in Singapore. The petitioner submits credit advices and the aforementioned bank statements for the petitioner and [redacted]. The petitioner did not submit certified translations of Mrs [redacted] tax returns as specifically requested, although the director admittedly mistakenly referred to these documents as foreign bank statements.

The credit advices reflect that the petitioner received $3,980 from Citibank N.A. Singapore on April 26, 2000, and $20,000 from G C B Singapore on October 4, 2000 "For Education Fee 54." The remaining funds were wired from Chase Manhattan Bank in New York. Those transfers include: $69,975 on August 15, 2000; $115,975 on October 5, 2000; $113,975 on October 1, 2000; $74,975 on November 22, 2000; $249,975 on February 6, 2001; and $149,975 on March 20, 2001. The amount received by the petitioner as of September 2000, the month in which Mrs. [redacted] claims to have wired $600,000, totaled only $93,955. The total wired to the petitioner between April 2000 and March 2001 was $798,830. (The director reached a slightly higher number, $827,830.)

The director noted that while the petitioner had established that she had received the wired funds, she had not established the source of those wire transfers. On appeal, counsel notes that the petitioner submitted Mrs [redacted] tax returns and asserts: "To do more to show that these are lawful monies is beyond reason." Counsel further states: "No one has suggested what else we could provide."

8 C.F.R. § 103.2(a)(3) provides that any foreign language document "shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Contrary to counsel's assertion that the director failed to advise what other documentation might be necessary, the director specifically requested translations of the foreign-language documents in the file. The unsupported assertion that a number on the tax return reflects the tax owed, and that adding 60 percent to that number reveals the gross income is insufficient. A complete certified translation of the tax return form and any relevant exchange rates for the foreign currency are necessary for the Bureau to assess Mrs [redacted] income.

Furthermore, the director advised the petitioner that the record did not establish the source of the wired funds. We concur with the director. The credit advices do not identify the account holder of the debited accounts in Singapore and Chase Manhattan in New York. Moreover, they are not consistent with Mrs. [redacted] claim to have wired $600,000 in September 2000 or even as of that time. Nor are the credit advices consistent with counsel's implication in response to the director's request for additional documentation that all the money came from Singapore. In fact, most of the money came from an account at Chase Manhattan in New York after September 2000. Even if the funds did come from Singapore, the record does not substantiate claims that Mrs. [redacted] has business interests in that country. The business tax returns, while not translated, appear to be Indonesian returns. The two bank reference letters for Mrs [redacted] are from banks in Indonesia. The record contains no evidence that Mrs [redacted] has an account in Singapore or at Chase Manhattan in New York.

Based on the information submitted, it is apparent that the petitioner is involved with a legitimate commercial enterprise with considerable upstart expenses. The petitioner, however, has not established that she meets the minimum eligibility requirements for this visa classification based on her contribution of debt instead of equity to the new commercial enterprise and the lack of translations and transactional evidence tracing the funds back to an account owned by [redacted]

For all of the reasons set forth above, considered in sum and as alternative grounds for denial, this petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.